SUPREME COURT, U. S.
Supreme Court, U.S.
FILED
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E. ROBERT SEAVER, CLERK

Supreme Court of the United States

October Term, 1970

No. 856

JANEY T. GREENSPUN,

Petitioner,

vs.

THE STATE OF NEVADA; JOHN KOONTZ, SECRETARY OF STATE, STATE OF NEVADA; AND THOMAS MULROY, REGISTRAR of VOTERS of CLARK COUNTY, STATE OF NEVADA,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statement of the case	2
Reasons for granting the writ:	
1. The Decision Below Side-steps a Significant Constitutional Question Which Affects the Vital Public Interest of Large Numbers of American Citizens	3
2. The Decision Below Avoids Ruling on the Merits of an Important Constitutional Issue That Will Continue to Present Itself to the Courts Repeatedly, Until a Conclusive Judgment is Rendered by the United States Supreme Court	4
3. The Decision Below Fosters the Active, Continued, and Unabated Violation of the Equal Protection of Law Guaranteed to Voters by the Due Process Clause of the 5th Amendment to the United States Supreme Court	5
4. The Decision Below Was Rendered Capriciously and Arbitrarily Without Recourse to Traditional Legal Process Afforded Counsel and Clients and Thereby Invites the Exercise of the Supervisory Power of the United States Supreme Court	6
Conclusion	8
Appendix	
Judgment of the Court of Appeals	A-1
Opinion of the Court of Appeals	A-2

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

The Petitioner Janey T. Greenspun respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on July 31, 1970.

Opinion Below

The judgment and opinion of the Court of Appeals appears in the Appendix hereto.

Jurisdiction

The judgment of the Court of Appeals was entered on July 31, 1970, and this petition for certiorari is filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. section 1254(1).

Questions Presented

1. Whether there exists in favor of the 18 year old Petitioner a common law federal right to vote stemming from National Citizenship, secured by the Federal Constitution, and protected by the United States Government.

2. Whether the United States Government's adoption and current use of the Nevada State government's classification of presidential voters based on a 21 year old age standard – and that same federal government's contradictory adoption and current use of the Georgia and Kentucky state 18 year old standards, and Alaska and Hawaii 19 and 20 year old standards of age classification of presidential voters – violates the Equal Protection of Law guaranteed to the 18 year old Petitioner by the Due Process Clause of the 5th Amendment of the United States Constitution, in that it perpetrates a double electoral standard for illegal discrimination among one and the same classification of federal citizens within the national electorate.

3. Whether the Nevada State government's establishment of 21 years of age as the standard of classification for presidential voters is arbitrary and unreasonable and is oppressive and is therefore in violation of the Equal Protection of Law Clause of the 14th Amendment of the United States Constitution.

Statement of the Case

Petitioner, an 18 year old citizen of the United States, duly presented herself to the Registrar of Voters of Clark County, State of Nevada, early in the presidential election of 1968. She then and there requested an Affidavit of Voter Registration, which was denied on the ground that she was not 21 years of age as required by the Election Laws of the State of Nevada.

Petitioner stated that she did not contest the laws of Nevada qualifying voters as to 21 years of age in order to vote in Nevada State elections, but that the Nevada State authorities

could not so restrict her right to vote in the National Election for President and Vice-President of the United States.

Petitioner then filed a complaint in the Federal District Court of Nevada setting forth the deprivation of her federal constitutional rights and privileges as a result of the above stated dispute, and sought a declaratory judgment adjudicating her right to federal suffrage and the elective franchise in the presidential election. She based her cause of action squarely on the narrow yet undeniable legal proposition that as a first-class citizen of the United States of America, she was entitled, under the laws of the United States Government, to vote in the election of its federal Executive Officers, the President and Vice-President.

Respondents filed separate motions to dismiss the complaint, which were set for a Hearing jointly, and in support of which, and in opposition to, Memorandums of Points and Authorities were submitted. The matter was fully argued, and at the conclusion thereof the District Court entered an order to dismiss the action on the ground that the complaint failed to state a claim upon which relief could be granted.

Petitioner appealed to the United States Court of Appeals for the Ninth Circuit. Appellate Briefs were duly prepared and filed, and after more than a year a date for Oral Argument set. Subsequently on that date, in the Court of Appeals Courtroom, at the moment Petitioner's case was called, the Presiding Judge unexpectedly denied the Petitioner her right to a Hearing and Oral Argument, capriciously dismissed the Appeal as moot (an issue raised in the Briefs for learned argument), and many days later issued a Per Curiam Opinion stating three peripetetic reasons to support its arbitrary action. (See Appendix hereto)

Reasons for Granting the Writ

1. The Decision Below Side-steps a Significant Constitutional Question Which Affects the Vital Public Interest of Large Numbers of American Citizens.

The question of an 18 year old right to vote affects approximately 15 million United States Citizens between the ages of 18 and 21.

Thus Petitioner's claim that she is entitled to vote in presidential elections, based on her federal right to vote and the guarantee of equal protection of the law under the due process clause of the 5th amendment cuts a wide swath in the public interest. Accordingly, it meets the generally accepted standards that obtain in granting a writ of certiorari, one statement of which is as follows:

> (T)hose cases which present questions whose resolution will have immediate importance far beyond the particular facts and parties involved. (Thus) (t)hose of you whose petitions for certiorari are granted by the Supreme Court will know, therefore, that you are, in a sense, prosecuting or defending class actions; that you represent not only your clients, but tremendously important principles, upon which are based the plans, hopes, and aspirations of a great many people throughout the country.
>
> (Address of Chief Justice Vinson before American Bar Association, Sept. 7, 1949, 60 S. Ct. v, vi; quoted in Stern & Gressman, *Supreme Court Practice*, 4th Ed. 1969)

To allow the decision below to go unchecked will perpetuate skirting a constitutional question that vitally affects millions of American citizens, and to prevent this judicial side-step, grant of certiorari to review that decision is justified.

2. The Decision Below Avoids Ruling on the Merits of an Important Constitutional Issue That Will Continue to Present Itself to the Courts Repeatedly, Until a Conclusive Judgment is Rendered by the United States Supreme Court.

Petitioner's legal claim that she is entitled to vote in presidential elections, based on the fact that she is in the same presidential voter classification as 18 year old United States citizens in Georgia, Kentucky, Alaska and Hawaii, and is therefore entitled to equal protection of the law in her federal right to vote, *is not peculiar to herself.* It extends to virtually millions of 18 year old citizens in like circumstances, and will eventually extend to untold numbers of advancing generations.

It can therefore be expected that the issue of their right to vote – as framed in this instant case – will recurr time and time again until the Highest Court in the Land has settled the controversies of law involved.

Furthermore, as stated in Supreme Court Rule 19, a reason for review on writ of certiorari is that "an important question of federal law (exists) which has not been, but should be, settled by this Court". Such a statement is a compelling basis for allowing review in this case, because this case involves a unique federal question of immense ramifications, and is obviously a question that should only be settled by our nation's highest tribunal.

Thus a grant of certiorari to review the decision below is justified on the elementary and fundamental proposition of law and equity, that to allow the present case to go undecided on the merits will only generate a multiplicity of suits and suitors throughout the country, all destined, ultimately, to compel a final and decisive ruling from the nation's Supreme Court.

3. The Decision Below Fosters the Active, Continued and Unabated Violation of the Equal Protection of Law Guaranteed to Voters by the Due Process Clause of the 5th Amendment to the United States Constitution.

If the Petitioner's claim – that to allow 18 year olds in Georgia and Kentucky, and 19 year olds in Alaska, and 20 year olds in Hawaii, to utilize their federal franchise as United States

citizens, and exercise their right to vote for National Executive Officers, the President and Vice-President of the United States, and yet to disallow the same and uniform treatment to the Petitioner, who is in like circumstances and similar conditions in the national electorate is to invidiously discriminate, patently deny equal voting rights under the law, and foist an impartial administration of justice against the Petitioner in violation of her 5th Amendment constitutional rights – is with merit, then the decision below serves as a gateway to this continued abuse throughout many states and among millions of U.S. citizens.

Such unabated governmental violation of the law prejudices not only the Petitioner and the legions of young people whom she symbolizes, but also corrodes general public respect for law and order, and more important, directly impairs the fair and just administration of our electoral system.

Therefore, grant of certiorari to review the decision below is justified in that it enables the United States Supreme Court to settle an important Constitutional question involving wide practical consequence in American government.

4. The Decision Below Was Rendered Capriciously and Arbitrarily Without Recourse to Traditional Legal Process Afforded Counsel and Clients and Thereby Invites the Exercise of the Supervisory Power of the United States Supreme Court.

Petitioner filed notice of appeal in this case on February 19, 1969. Thereafter Appellate Briefs were duly prepared and filed with the Court of Appeals. More than a year later, in May of 1970, the case was calendared for Oral Argument on June 30, 1970.

Counsel for Petitioner of course devoted several days to preparation for this Oral Argument, as well as travelling 3000 miles from New York to Los Angeles to be present in the Ninth Circuit Courtroom on June 30. Petitioner herself traveled with her family from the neighboring state of Nevada, in order to be present in the courtroom.

The Oral Argument was set for the 9:30 a.m. calendar, but on Monday, June 29, set forward to 2:30 p.m. (on Tuesday, June 30). At 2:30 p.m. on that day the instant case, along with several others on the afternoon docket, was announced by the Presiding Judge. He then requested all counsel present to state how much time they intended to devote to the oral argument of their respective cases. Counsel replied in turn, including this Counsel, whose response was routinely accepted.

Then the Presiding Judge proceeded to announce that the first case on the afternoon calendar had been submitted on the briefs, – and that finished, the Presiding Judge unexpectedly announced that 'the Court had considered the Greenspun case in chambers and had decided to declare it moot' (paraphrase), and therefore would not accept the scheduled Oral Argument.

This unorthodox pronouncement on the Greenspun case literally hit the courtroom like a bolt out of the blue. There was a momentary shocked silence throughout at the surprise of it, and then a kind of general hubbub as reporters hurriedly emptied the pressbox, apparently to scoop the story, and as Counsel for the Appellees jumped up, themselves startled by the unexpected procedure. Next the Presiding Judge swiftly called the remaining case on the calendar, and before anything at all could be said, Counsel for that case had assumed the courtroom rostrum and was launched into an oral presentation.

Petitioner and Counsel adamantly protest the occurrence of this mild but nevertheless real donnybrook to which they were subjected in the Ninth Circuit Court of Appeals, and most vehemently, plead that the arbitrary and capricious manner in which their cause was denied the right to Oral Argument is a justification for grant of writ of *certiorari* in this case.

It calls into play the supervisory power of the United States Supreme Court, to see that the system of justice provided by the Federal Judiciary is administered according to standards of due process of law. And in the instant case, to allow an

Appellate Oral Argument, duly granted and calendared in the orderly prefection of an Appeal, to be arbitrarily and capriciously dismissed at the 9th hour, after literally months of preparation and waiting, would be to countenance a plain mis-carriage of justice.

Nor does it suffice to say that the Court of Appeals could merely jump to the conclusion – as it obviously did – that the instant case was moot. The issue of mootness had been argued from the beginning, in the Federal District Court, and duly raised and researched and written about in the Appellate Briefs, and, as one element of the merits of the instant case, deserved to be aired in oral argument by all counsel and the court, and to be duly deliberated on before a learned decision rendered.

In 63 Harvard Law Review 5, 13 (1949-'50), it is written that former Chief Justice Charles Evans Hughes occasionally "would recommend the grant of certiorari in a case . . . simply because the decision below was unjust, unreasonable, or plainly wrong". This is that kind of case.

Thus Petitioner ernestly, respectfully, urgently pleads, that even if only as a rudimentary proposition of justice, she was entitled to her 'day in court', where she chose to take her case, instead of into the streets, and that grant of writ of certiorari in this case is justified, in order to guarantee that fundamental right.

Conclusion

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

William Maurice Treadwell
Suite 302
530 Fifth Avenue
New York, New York 10036
Counsel for Petitioner

October 19, 1970.

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
U. S. Court of Appeals and Post Office Building
7th & Mission Streets, P. O. Box 547
San Francisco, California 94101

July 31, 1970

Re: No. 24087, Janey T. Greenspun v. The State of Nevada, et al.

Dear Sir:

An opinion in the above case was filed today, and pursuant to Rule 36 of the Federal Rules of Appellate Procedure a judgment was entered dismissing appeal [the judgment or order of the court below (administrative agency).] You have 14 days from this date to file a petition for rehearing if you wish to do so.

Pursuant to Rule 41(a) the mandate of this court will issue 21 days after the entry of judgment, unless the court enters an order otherwise, or grants a stay of the mandate or petition for rehearing is filed. If a petition for rehearing is filed and denied, the mandate shall issue 7 days after the entry of the order denying the petition.

Very truly yours,

Wm. B. Luck,
Clerk of Court

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JANEY T. GREENSPUN,
Appellant,

vs.

THE STATE OF NEVADA;
JOHN KOONTZ, Secretary of State,
State of Nevada; and THOMAS MULROY,
Registrar of Voters of Clark County,
State of Nevada,
Appellees.

No. 24,087

[July 31, 1970]

Appeal from the United States District Court
for the State of Nevada

Before: KOELSCH and CARTER, Circuit Judges, and
HALL, District Judge

PER CURIAM:

The appeal is dismissed as moot:

1. The appellant is claiming only the right to vote in the presidential election of 1968. That date is past and no relief could be granted to the appellant in that respect.

2. By the time the next election arrives for president the appellant will be 21, and no controversy will exist.

3. Congress has enacted the so-called Voting Rights Legislation, H.R. 4249, which gives broader relief than that asked for by the appellant in the within case. The Court does not indicate any view whatsoever concerning the constitutionality of H.R. 4249.

SUPREME COURT, U. S.

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

MEMORANDUM OPPOSING CERTIORARI

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Attorney for Respondents
THE STATE OF NEVADA AND
JOHN KOONTZ, SECRETARY OF
STATE, STATE OF NEVADA

IN THE

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OF THE

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OCTOBER TERM, 1970

No. 856

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

MEMORANDUM OPPOSING CERTIORARI

Respondents State of Nevada and John Koontz, Secretary of State, State of Nevada, represent to the Court as follows:

Petitioner instituted this action to secure her right to vote in the presidential election of 1968. At that time, Petitioner was over eighteen years of age and under twenty-one years of age. By the time the next presidential election will take place, Petitioner will

be over twenty-one years of age. This proceeding is therefore moot.

Even if this proceeding is not moot by reason of the attainment by Petitioner of the age of majority, it is moot by reason of the enactment of the Voting Rights Act Amendments of 1970, Public Law 91–285, 84 Stat. 314. The pertinent provisions thereof are set forth in the Appendix. The Act affords relief which is broader than that sought by Petitioner in this case, and forecloses any contention that this issue will be a recurring one.

Therefore, it appears that Petitioner's application for writ of certiorari should be denied.

Respectfully submitted,

HARVEY DICKERSON
Attorney General of Nevada
Supreme Court Building
Carson City, Nevada 89701

By ROBERT A. GROVES
Deputy Attorney General

November 6, 1970.

APPENDIX

TITLE III—REDUCING VOTING AGE TO EIGHTEEN IN FEDERAL, STATE, AND LOCAL ELECTIONS

Declaration and Findings

Sec. 301. (a) The Congress finds and declares that the imposition and application of the requirement that a citizen be twenty-one years of age as a precondition to voting in any primary or in any election—

(1) Denies and abridges the inherent constitutional rights of citizens eighteen years of age but not yet twenty-one years of age to vote—a particularly unfair treatment of such citizens in view of the national defense responsibilities imposed upon such citizens;

(2) has the effect of denying to citizens eighteen years of age but not yet twenty-one years of age the due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment of the Constitution; and

(3) does not bear a reasonable relationship to any compelling State interest.

(b) In order to secure the constitutional rights set forth in subsection (a), the Congress declares that it is necessary to prohibit the denial of the right to vote to citizens of the United States eighteen years of age or over.

Prohibition

Sec. 302. Except as required by the Constitution, no citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any primary or in any election shall be denied the right to vote in any such primary or election on account of age if such citizen is eighteen years of age or older.

SPO, Carson City, Nevada, 1970

TABLE OF AUTHORITIES CITED

Cases	Page
Bynum v. Burns, 379 F. 2d 229	2
Fair v. Dekle, 367 F. 2d 377	2
Manion v. Holyman, 379 F. 2d 843	2
Mills v. Green, 159 U.S. 651, 16 S. Ct. 132, 40 L. Ed. 293	2
Munoz v. Amador, 340 F. 2d 590	2
Oregon v. Mitchell, No. 43 Orig.	2
Texas v. Mitchell, No. 44 Orig.	2
United States v. Arizona, No. 46 Orig.	2
United States v. Idaho, No. 47 Orig., 39 L W 3173	2

Statute	
Voting Rights Act Amendments of 1970, H.R. 4249, 38 L W 99	1, 2, 3

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Respondents.

MEMORANDUM OPPOSING CERTIORARI.

Respondent Thomas Mulroy represents to the Court as follows:

1. The above-entitled cause came before the United States Court of Appeals for the Ninth Circuit on June 30, 1970, and the court on its own motion dismissed the case as moot.

2. An opinion was rendered and judgment entered on July 31, 1970. A petition for certiorari was filed on October 15, 1970.

3. The Voting Rights Act Amendments of 1970, H.R. 4249, 38 L W 99, sets the voting age for all elections at 18 years.

4. There are at the present time four cases pending before this Honorable Court which question the constitutionality of the Voting Rights Act Amendments of 1970, including the 18-year-old vote provisions. These cases are as follows: *Oregon v. Mitchell*, No. 43 Orig.; *Texas v. Mitchell*, No. 44 Orig.; *United States v. Arizona*, No. 46 Orig.; *United States v. Idaho*, No. 47 Orig., 39 L W 3173.

5. Petitioner will be 21 years old by the date of the next Presidential election in 1972 and will therefore be entitled to vote. Petitioner does not bring the action as a class action.

6. Petitioner fails to cite any case authority in support of her Petition for a Writ of Certiorari. Respondent respectfully submits that the question presented by Petitioner is now moot. In support of its position, the Respondent cites the case of *Mills v. Green*, 159 U.S. 651, 653, 16 S. Ct. 132, 40 L. Ed. 293 (1895), wherein it is stated:

> "The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it."

Also see *Manion v. Holyman*, 379 F. 2d 843 (7th Cir. 1967); *Bynum v. Burns*, 379 F. 2d 229 (8th Cir. 1967); *Fair v. Dekle*, 367 F. 2d 377 (5th Cir. 1966); *Munoz v. Amador*, 340 F. 2d 590 (5th Cir. 1965).

Therefore, it appears that Petitioner's Application for a Writ of Certiorari is moot since Petitioner will be entitled to vote at the next Presidential election. In

addition, the question of the constitutionality of the 18 year voting rights provision of the Voting Rights Act Amendments of 1970 is already before the Court.

Respectfully submitted,

ADDELIAR D. GUY,
Deputy District Attorney,
Counsel for Respondent.

GEORGE E. FRANKLIN, JR.,
District Attorney,

JOHN S. MCGROARTY,
Deputy District Attorney,
Of Counsel.